



## **Supreme Court Considers Claim of Special Administrator of Inmate Who Died of Suicide While in Jail**

*Reiber v. County of Gage*, 303 Neb. 325, --- N.W.2d --- (2019),

While in a county jail, an inmate died of suicide. The inmate's special administrator of his estate brought a negligence action against the County, the County sheriff, and unknown County sheriff's employees under the Nebraska Political Subdivisions Tort Claims Act (PSTCA). The PSTCA is governed in statute by Neb. Rev. Stat. §§ 13-901 to 13-928. The inmate's special administrator alleged that the defendants failed to follow the jail's established protocol and knew, or in the exercise of reasonable care should have known, that the inmate was suicidal. After a bench trial solely on the issue of liability, the district court found that the defendants had exercised due care and that the cause of action was barred by sovereign immunity under § 13-910(1). The special administrator appealed from such judgment. The Supreme Court agreed with the findings of the district court and ultimately, affirmed the decision of the lower court.

Two arguments in support of the special administrator's contention were that the district court erred in admitting the expert witness testimony of and a psychiatrist and forensic psychiatrist. Second, the special administrator argues the psychiatrist's testimony was not helpful to the trier of fact, because his testimony that the inmate's suicide was not reasonably foreseeable amounted to an opinion as to how the court should decide the case.

"Whether a witness is qualified as an expert is a preliminary question for the trial court. A trial court is allowed discretion in determining whether a witness is qualified to testify as an expert, and unless the court's finding is clearly erroneous, such a determination will not be disturbed on appeal." (Citations omitted.)

“A negligence action brought under the PSTCA has the same elements as a negligence action brought against a private individual—a plaintiff must show a legal duty owed by the defendant to the plaintiff, a breach of such duty, causation, and damages. While the existence of a duty and the identification of the applicable standard of care are questions of law, the ultimate determination of whether a party deviated from the standard of care and was therefore negligent is a question of fact. To resolve the issue, a finder of fact must determine what conduct the standard of care would require under the particular circumstances presented by the evidence and whether the conduct of the alleged tortfeasor conformed with the standard. *(Citations omitted.)*

“The threshold issue in any negligence action is whether the defendant owes a legal duty to the plaintiff. Here, the parties do not dispute that prison officials owe inmates a legal duty, and we agree. In *Goodenow v. State*, we held that the standard of care by prison officials to inmates is as follows: “A jailer is required to exercise a degree of care necessary to provide reasonably adequate protection for his or her inmates.” What constitutes “‘reasonably adequate protection’ ... necessarily depends upon what correctional officers knew or should have known about a particular risk of injury before it occurred.” *(Citations omitted.)*

The Court disagreed with the special administrator’s claim that the psychiatrist gave opinions as to how to decide the case and therefore provided opinions that were not helpful. The psychiatrist’s testimony went directly to the special administrator’s theory that the County failed to adhere to the jail’s protocols and knew or should have known that the inmate was suicidal. His testimony was based on evidence in the record and helped the court identify factors which could determine whether an individual in custody poses a suicide risk. Additionally, the psychiatrist’s testimony assisted the trier of fact in determining whether appellees’ conclusions regarding the inmate’s risk of suicide were accurate.

The Supreme Court found that the court did not abuse its discretion in admitting the psychiatrist’s testimony.

A limited waiver of governmental immunity and the exclusive procedure for maintenance of a tort claim against a political subdivision or its officers, agents, or employees is provided in the PSTCA. “Where an officer or employee of a political subdivision is sued in his or her individual capacity, but is acting within the scope of

his or her employment as a government official, the PSTCA applies, and the individual is immune unless the State has expressly waived its sovereign immunity.” (*Citations omitted.*)

“The PSTCA eliminates, in part, the traditional immunity of political subdivisions for the negligent acts of their employees. Except as otherwise provided, in all suits brought under the PSTCA, ‘the political subdivision shall be liable in the same manner and to the same extent as a private individual under like circumstances.’” (*Citations omitted.*) Yet, Neb. Rev. Stat. § 13-910(1) provides that political subdivisions are immune from suit under the PSTCA for actions based upon the acts or omissions of an employee exercising due care in the execution of a rule or regulation. The claim is barred by sovereign immunity and the political subdivision, officer, or employee cannot be liable if the claim comes within the exemption under § 13-910(1). Such a suit barred by sovereign immunity is dismissed for lack of subject matter jurisdiction.

The district court determined that “[Inmate’s] death was not reasonably foreseeable ... and the jailers were acting with due care,” after a trial. The court found that the special administrator failed to prove the County or its employees did anything beyond exercising due care in carrying out jail rules and regulations. Such rules and regulations referred to by the trial court are regulations established by the Jail Standards Board.

The Supreme Court agreed that the record shows that standard procedures designed to detect an inmate’s suicide risk were followed. The arresting officer, informed the jail staff of the prior stabbing incident, completed a custody authorization form, did not observe any indication that the inmate might engage in self-harming behavior, and did not believe the inmate to be a suicide risk. An officer, who placed inmate in Emergency Protective Custody (EPC) in 2011, did not consider the inmate to be a suicide risk and did not think that an EPC was necessary. Additional facts were also considered by the Court and it then concluded the greater weight of the evidence in the record supported the district court’s finding that the County exercised due care in following jail rules and regulations in order to detect the risk of an inmate’s suicidal behavior.

The Supreme Court agreed with the district court that the special administrator’s claim was barred under Neb. Rev. Stat. § 13-910(1) and it affirmed the district

court's determination that it lacked subject matter jurisdiction over the special administrator's claim and that the County was entitled to judgment in their favor.

To see the full text of the *Reiber v. County of Gage* case, click [here](#).

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